



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

WALTER RICKY BELLAMY,
Plaintiff,

vs.

WILLIE EAGLETON,
Defendant.

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CIVIL ACTION NO. 8:10-01103-HFF-JDA

ORDER

This case was filed as a 42 U.S.C. § 1983 action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Defendant's motion for summary judgment be granted and Plaintiff's motion for summary judgment be denied. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on July 21, 2011, but Plaintiff failed to file any objections to the Report. In the absence of such objections, the Court is not required to give any

explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

The Court will adopt the Magistrate Judge's Report except to the extent that it recommends denying Plaintiff's claim for monetary relief pursuant to 42 U.S.C. § 1997e(e). It declines to adopt that recommendation. As a result, the Court will grant Defendant's motion for summary judgment as to Plaintiff's claims for injunctive relief, but will deny Defendant's motion for summary judgment as to Plaintiff's claims for monetary relief.

The Court's denial of Defendant's motion for summary judgment on Plaintiff's claims for monetary relief will be without prejudice and with leave to refile. Similarly, the Court will deny Plaintiff's motion for summary judgment without prejudice and with leave to refile.

The Court will deny the motions for summary judgment without prejudice and with leave to refile so as to provide the parties with the opportunity to address whether Plaintiff exhausted his administrative remedies. In Plaintiff's complaint, he indicated that a prisoner grievance procedure existed at his institution but that he failed to file a grievance regarding the claims raised in his complaint. Compl. 2, ECF No. 1. He also admitted that he had not received a final answer or determination before filing his complaint. *Id.* Yet, later in the complaint, he mentions filing inmate request forms and two grievances that were denied. *Id.* at 3. Defendant raised failure to exhaust administrative remedies as an affirmative defense in his answer, Def.'s Answer ¶ 10, at 3, ECF No. 15, but did not address the issue in his motion for summary judgment. Before reaching the merits of Plaintiff's claims for monetary relief, the Court desires briefing on whether Plaintiff failed to exhaust his administrative remedies. *See Anderson v. XYZ Corr. Health Servs., Inc.*, 407 F.3d 674,

682-83 (4th Cir. 2005) (holding that, except in the rare circumstance where failure to exhaust is apparent from the face of the complaint, district courts may raise the issue of exhaustion of remedies sua sponte as long as they provide petitioners with the opportunity to respond).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report to the extent it is consistent with this Order and incorporates it herein. Therefore, it is the judgment of the Court that Defendant's motion for summary judgment is **GRANTED IN PART** and **DENIED IN PART** *without prejudice* and with leave to refile. Plaintiff's motion for summary judgment is **DENIED** *without prejudice* and with leave to refile.

IT IS SO ORDERED.

Signed this 29th day of September, 2011, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within 30 days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.